

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

FRESHUB, INC., a Delaware Corporation,  
and FRESHUB, LTD., an Israeli Limited  
Liability Company,

Plaintiffs,

VS.

AMAZON.COM INC., a Delaware Corporation, AMAZON.COM SERVICES, LLC, a Delaware Limited Liability Company, PRIME NOW, LLC, a Delaware Limited Liability Company, WHOLE FOODS MARKET SERVICES, INC., a Texas Corporation,

Defendants.

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§ Case No.: 1:19-CV-00885-ADA

## JOINT MOTION TO MODIFY SCHEDULING ORDER

The parties, Plaintiffs Freshub, Inc. and Freshub, Ltd. (collectively, “Freshub”) and Defendants Amazon.com, Inc., Amazon.com Services, LLC, Prime Now, LLC, and Whole Foods Market Services, Inc. (collectively, “Defendants”), jointly request to modify the case schedule pursuant to the Order Modifying Schedule Order entered in this action on December 29, 2020 (Dkt. No. 86, “Modified Scheduling Order”). The parties have worked diligently to complete discovery and depositions within the discovery period, but require a few additional days to complete opening expert reports as they work to resolve additional discovery issues including third party discovery. Consequently, the parties jointly seek an extra five days for the preparation of opening expert reports, which otherwise were due one week after discovery closed. Specifically, the parties request to mutually extend the deadline for opening reports in

the Modified Scheduling Order as set forth below and in the proposed order filed with this Motion. The single extension requested will not impact any deadlines for the Court.

Item	Current Deadlines Pursuant to Modified Scheduling Order	Parties' Agreed Deadline
Close of fact discovery	1/29/21	1/29/21 (unchanged)
Opening expert report	2/5/21	2/10/21
Rebuttal Expert Reports	3/5/21	3/5/21 (unchanged)
Close of Expert Discovery	3/19/21	3/19/21 (unchanged)
Deadline to meet and confer to discuss narrowing the number of claims asserted and prior art references at issue. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.	3/23/21	3/23/21 (unchanged)
Dispositive motion deadline and <i>Daubert</i> motion deadline. [40 weeks after <i>Markman</i> ]	3/26/21	3/26/21 (unchanged)
Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, designations) [42 weeks after <i>Markman</i> ]	4/9/21	4/9/21 (unchanged)
Serve objections to pretrial disclosures/rebuttal disclosures	4/23/21	4/23/21

[44 weeks after <i>Markman</i> ]		(unchanged)
Serve objections to rebuttal disclosures; file motions <i>in limine</i> [45 weeks after <i>Markman</i> ]	4/30/21	4/30/21 (unchanged)
File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, designations); file oppositions to motions <i>in limine</i> [46 weeks after <i>Markman</i> ]	5/7/21	5/7/21 (unchanged)
Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> [47 weeks after <i>Markman</i> ]	5/14/21	5/14/21 (unchanged)
File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> [3 business days before Final Pretrial Conference]	5/18/21	5/18/21 (unchanged)
Final Pretrial Conference, 9 AM	5/21/21, subject to the Court's availability	5/21/21, subject to the Court's availability
Jury Selection/Trial	6/14/21, subject to the Court's availability	6/14/21, subject to the Court's availability

Dated: January 29, 2021

By: /s/ Saina S. Shamilov

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Dated: January 29, 2021

By: /s/ John Palmer

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 29, 2021, a copy of the foregoing was served electronically, via CM/ECF, on all counsel of record who are deemed to have consented such service under the Court's local rules. Any other counsel of record will be served via facsimile and certified mail, return receipt requested.

By: /s/ John P. Palmer  
John P. Palmer